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9 **BEFORE THE**
CALIFORNIA BOARD OF ACCOUNTANCY
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against

Case No. AC-2009-22

13 **ERNEST EUNSUK DOW**
3435 Wilshire Boulevard, Suite 460
14 Los Angeles, CA 90010
15 Certified Public Accountant Certificate No. CPA 37413

ACCUSATION

16 and

17 **ERNEST E. DOW & CO., AN ACCOUNTANCY**
CORPORATION
3435 Wilshire Boulevard, Suite 460
18 Los Angeles, CA 90010
19 Certified Public Accountancy Corporation Certificate No.
COR 6212

20 Respondents.
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22 Complainant alleges:

23 **PARTIES**

- 24 1. Patti Bowers (Complainant) brings this Accusation solely in her official capacity as
25 the Executive Officer of the California Board of Accountancy, Department of Consumer Affairs.
26 2. On or about May 7, 1983, the California Board of Accountancy (Board) issued
27 Certified Public Accountant Certificate No. CPA 37413 to Ernest Eunsuk Dow (Respondent
28 Dow). The Certified Public Accountant Certificate will expire on June 30, 2011, unless renewed.

1 Respondent Dow's Certificate was in delinquent status and invalid during on or about the
2 following dates:

3 July 1, 1989 – October 3, 1989

4 July 1, 1991 – July 23, 1991

5 July 1, 1993 – July 23, 1993

6 July 1, 1995 – September 10, 1996

7 July 1, 1997 – January 18, 2000

8 July 1, 2001 – March 27, 2003

9 July 1, 2003 – June 19, 2005

10 July 1, 2007 – November 18, 2007

11 3. On or about January 27, 2009, the Board issued Certified Public Accountancy
12 Corporation Certificate No. COR 6212 to Ernest E. Dow & Co., an Accountancy Corporation,
13 with Respondent Dow as the sole shareholder. The Certified Public Accountancy Corporation
14 Certificate will expire on January 31, 2011, unless renewed.

15 JURISDICTION

16 4. This Accusation is brought before the Board, Department of Consumer Affairs, under
17 the authority of the following laws. All section references are to the Business and Professions
18 Code unless otherwise indicated.

19 STATUTORY PROVISIONS

20 5. Section 118, subdivision (b), provides that the suspension, expiration, surrender or
21 cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary
22 action during the period within which the license may be renewed, restored, reissued or
23 reinstated.

24 6. Section 477, states, in part, that:

25 “(b) ‘License’ includes certificate, registration or other means to engage in a business or
26 profession regulated by this code.”

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1 7. Section 5050, subdivision (a), states:

2 "Except as provided in subdivision (b) and (c) of this section, in subdivision (a) of Section
3 5054, and in Section 5096.12, no person shall engage in the practice of public accountancy in this
4 state unless the person is the holder of a valid permit to practice public accountancy issued by the
5 board or a holder of a practice privilege pursuant to Article 5.1 (commencing with Section
6 5096.)."

7 8. Section 5051 states:

8 "Except as provided in Sections 5052 and 5053, a person shall be deemed to be engaged in
9 the practice of public accountancy within the meaning and intent of this chapter if he or she does
10 any of the following:

11 "(a) Holds himself or herself out to the public in any manner as one skilled in the
12 knowledge, science, and practice of accounting, and as qualified and ready to render professional
13 service therein as a public accountant for compensation.

14 "(b) Maintains an office for the transaction of business as a public accountant.

15 "(c) Offers to prospective clients to perform for compensation, or who does perform on
16 behalf of clients for compensation, professional services that involve or require an audit,
17 examination, verification, investigation, certification, presentation, or review of financial
18 transactions and accounting records.

19 "(d) Prepares or certifies for clients reports on audits or examinations of books or records
20 of account, balance sheets, and other financial, accounting and related schedules, exhibits,
21 statements, or reports that are to be used for publication, for the purpose of obtaining credit, for
22 filing with a court of law or with any governmental agency, or for any other purpose.

23 "(e) In general or as an incident to that work, renders professional services to clients for
24 compensation in any or all matters relating to accounting procedure and to the recording,
25 presentation, or certification of financial information or data.

26 "(f) Keeps books, makes trial balances, or prepares statements, makes audits, or prepares
27 reports, all as a part of bookkeeping operations for clients.

28 "(g) Prepares or signs, as the tax preparer, tax returns for clients.

1 “(h) Prepares personal financial or investment plans or provides to clients products or
2 services of others in implementation of personal financial or investment plans.

3 “(i) Provides management consulting services to clients.

4 “The activities set forth in subdivisions (f) to (i), inclusive, are "public accountancy" only
5 when performed by a certified public accountant or public accountant, as defined in this chapter.

6 “A person is not engaged in the practice of public accountancy if the only services he or she
7 engages in are those defined by subdivisions (f) to (i), inclusive, and he or she does not hold
8 himself or herself out, solicit, or advertise for clients using the certified public accountant or
9 public accountant designation. A person is not holding himself or herself out, soliciting, or
10 advertising for clients within the meaning of this section solely by reason of displaying a CPA or
11 PA certificate in his or her office or identifying himself or herself as a CPA or PA on other than
12 signs, advertisements, letterhead, business cards, publications directed to clients or potential
13 clients, or financial or tax documents of a client.”

14 9. Section 5063, states, in the pertinent part:

15 “(b) A licensee shall report to the board in writing the occurrence of any of the following
16 events occurring on or after January 1, 2003, within 30 days of the date the licensee has
17 knowledge of the events:

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19 “(3) Any notice of the opening or initiation of a formal investigation of the licensee by the
20 Securities and Exchange Commission or its designee. . . .”

21 10. Section 5060 subdivision (b), states that “[n]o person or firm may practice public
22 accountancy under any name other than the name under which the person or firm holds a valid
23 permit to practice issued by the board.”

24 11. Section 5100 states, in pertinent part:

25 "After notice and hearing the board may revoke, suspend, or refuse to renew any permit or
26 certificate granted under Article 4 (commencing with Section 5070) and Article 5 (commencing
27 with Section 5080), or may censure the holder of that permit or certificate for unprofessional
28 conduct that includes, but is not limited to, one or any combination of the following causes:

2 “(g) Willful violation of this chapter or any rule or regulation promulgated by the board
3 under the authority granted under this chapter.

5 "(l) The imposition of any discipline, penalty, or sanction on a registered public accounting
6 firm or any associated person of such firm, or both, or on any other holder of a permit, certificate,
7 license, or other authority to practice in this state, by the Public Company Accounting Oversight
8 Board or the United States Securities and Exchange Commission, or their designees under the
9 Sarbanes-Oxley Act of 2002 or other federal legislation. . . ."

15 REGULATORY PROVISIONS

17 “(a) 80 Hours.

24 || . . .

26 “A licensee who engages in planning, directing, performing substantial portions of the
27 work, or reporting on an audit, review, compilation, or attestation service, shall complete 24 hours
28 of the 80 hours of continuing education required pursuant to subsection (a) in the course subject

1 matter specified in this subsection. Course subject matter must pertain to financial statement
2 preparation and/or reporting (whether such statements are prepared on the basis of generally
3 accepted accounting principles or other comprehensive bases of accounting), auditing, reviews,
4 compilations, industry accounting, attestation services, or assurance services. This continuing
5 education shall be completed in the same two-year license renewal period as the report is issued.
6 If no report is issued because the financial statements are not intended for use by third parties, the
7 continuing education shall be completed in the same two-year license renewal period as the
8 financial statements are submitted to the client.

9 “(d) A licensee who must complete continuing education pursuant to subsections (b)
10 and/or (c) of this section shall also complete an additional eight hours of continuing education
11 specifically related to the detection and/or reporting of fraud in financial statements. This
12 continuing education shall be part of the 80 hours of continuing education required by subsection
13 (a), but shall not be part of the continuing education required by subsections (b) or (c). This
14 requirement applies to licensees who renew their licensee on or after July 1, 2005.

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16 “(g) Failure to Comply.

17 “A licensee's willful failure to comply with the requirements of this section shall constitute
18 cause for disciplinary action pursuant to Section 5100(g) of the Accountancy Act.”

19 14. California Code of Regulations, title 16, section 94, states:

20 “Failure to comply with these continuing education rules by a licensee engaged in public
21 practice, as defined in Business and Professions Code Section 5051, constitutes cause for
22 disciplinary action under Section 5100.”

23 COST RECOVERY

24 15. Section 5107, subdivision (a), states:

25 “The executive officer of the board may request the administrative law judge, as part of the
26 proposed decision in a disciplinary proceeding, to direct any holder of a permit or certificate
27 found to have committed a violation or violations of this chapter to pay to the board all reasonable

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1 costs of investigation and prosecution of the case, including, but not limited to, attorneys' fees.
2 The board shall not recover costs incurred at the administrative hearing."

3 **FIRST CAUSE FOR DISCIPLINE**

4 **(SEC Discipline Imposed Against Licensee)**

5 16. Respondent Dow is subject to disciplinary action under section 5100, subdivision (I),
6 on the grounds of unprofessional conduct, in that on or about July 29, 2008, the United States
7 Securities and Exchange Commission (SEC) imposed discipline, penalty, or sanction on
8 Respondent Dow's practice of accounting for violating the Sarbanes-Oxley Act of 2002 in the
9 proceeding entitled *In the Matter of Choi Dow Ian Hong & Lee Accountancy Corporation, et al*,
10 SEC Accounting and Auditing Enforcement Release No. 2849, Administrative Proceeding File
11 No. 3-12790. The SEC ordered Respondent Dow's practice of accounting before the SEC
12 censured. The circumstances underlying the action are as follows:

13 a. On or about December 2, 2004, Respondent Dow, as engagement partner, prepared
14 and issued an audit report for VALCAPX Acquisition Corporation, a public company, for the
15 fiscal years ended June 30, 2002, 2003, and 2004 (Audit Report). Prior to or during his
16 engagement of services and issuing of the Audit Report for VALCAPX, the firm that Respondent
17 Dow was working for at the time he performed the audit, Choi, Dow, Ian, Hong & Lee, CPA's, a
18 Professional Corporation, Certified Public Accountancy Corporation Certificate No. COR 4132
19 ["the firm"], was not registered with the Public Accounting Oversight Board (PCAOB), a
20 violation of the Sarbanes-Oxley Act of 2002. As a result, the firm and Respondent Dow did not
21 possess the requisite qualifications to represent others.

22 b. On or about December 9, 2004, VALCAPX filed with the United States Securities
23 and Exchange Commission (SEC) its Form 10-KSB, which included the Audit Report prepared
24 by Respondent Dow as engagement partner.

25 c. On or about September 13, 2007, in Administrative Proceeding File No. 3-12790, the
26 SEC issued an Order Instituting Administrative Proceedings Pursuant to Section 4C of the
27 Securities Exchange Act of 1934 and Rule 102(e) of the Commission's Rules of Practice, and

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1 Notice of Hearing against Respondent Dow for issuing the VALCAPX Audit Report without
2 possessing the requisite qualification to represent others.

3 d. On or about July 29, 2008, in SEC Accounting and Auditing Enforcement Release
4 No. 2849, Administrative Proceeding File No. 3-12790, the SEC issued an Order Making
5 Findings and Imposing Remedial Sanctions Pursuant to Section 4C of the Securities Exchange
6 Act of 1934 and Rule 102(e) of the Commission's Rules of Practice which censured Respondent
7 Dow's privilege of appearing or practicing before the SEC as an accountant.

8 **SECOND CAUSE FOR DISCIPLINE**

9 **(Failure to Report SEC Initiating Action)**

10 17. Respondent Dow is subject to disciplinary action under sections 5100, subdivision
11 (g), and 5063, subdivision (b)(3), on the grounds of unprofessional conduct, in that Respondent
12 Dow failed to report to the Board the occurrence of the SEC instituting administrative
13 proceedings against him on or about September 13, 2007, under Administrative Proceeding File
14 No. 3-12790. Complainant refers to and by this reference incorporates the allegations set forth
15 above in paragraph 15, subdivisions (a)-(d), inclusive, as though set forth fully.

16 **THIRD CAUSE FOR DISCIPLINE**

17 **(Issuing an Audit Report Without a Valid Permit)**

18 18. Respondent Dow is subject to disciplinary action under sections 5100, subdivision (g)
19 and 5050, subdivision (a), on the grounds of unprofessional conduct, in that on or about
20 December 2, 2004, VALCAPX's Audit Report issuing date, Respondent Dow's permit to practice
21 as a Certified Public Accountant was in delinquent status. It was in a delinquent status from July
22 1, 2003 to June 19, 2005. Complainant refers to and by this reference incorporates the allegations
23 set forth above in paragraphs 2 and 15, subdivisions (a)-(d), inclusive, as though set forth fully.

24 **FOURTH CAUSE FOR DISCIPLINE**

25 **(Failure to Comply with Continuing Education Requirements)**

26 19. Respondent Dow is subject to disciplinary action under section 5100, subdivision (g),
27 and California Code of Regulations, title 16, sections 87, subdivisions (c) and (d), and 94, in that
28 on or about November 18, 2007, Respondent Dow disclosed on his two (2) year renewal form for

1 the period ended June 30, 2007, his completion of eight (8) hours of Accounting and Auditing
2 continuing education, while twenty-four (24) hours were required, and completion of two (2)
3 hours of Fraud continuing education while eight (8) hours were required. Respondent Dow failed
4 to complete sixteen (16) hours of Accounting and Auditing continuing education, and six (6)
5 hours of Fraud continuing education during his renewal period.

6 **FIFTH CAUSE FOR DISCIPLINE**

7 **(Practice Under Unregistered Firm Name)**

8 20. Respondents are subject to disciplinary action under sections 5100, subdivision (g),
9 and 5060, subdivision (b), in that between on or about January 3, 2008, and December 18, 2008,
10 Respondents practiced public accountancy under the unregistered corporate name of Ernest E.
11 Dow & Co., an Accountancy Corporation. On or about January 3, 2008, Ernest E. Dow & Co.,
12 an Accountancy Corporation, filed Articles of Incorporation with the Secretary of State. On or
13 about December 18, 2008, Respondent Dow informed the Board that under the name Ernest E.
14 Dow & Co., an Accountancy Corporation, he completed approximately: 215 tax returns; ten (10)
15 compilation reports, without notes; and one (1) review report.

16 **PRAYER**

17 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
18 and that following the hearing, the California Board of Accountancy issue a decision:

19 1. Revoking or suspending or otherwise imposing discipline upon Certified Public
20 Accountant No. CPA 37413, issued to Ernest Eunsuk Dow;

21 2. Revoking or suspending or otherwise imposing discipline upon Certified Public
22 Accountancy Corporation Certificate No. COR 6212, issued to Ernest E. Dow & Co., an
23 Accountancy Corporation;

24 3. Ordering Ernest Eunsuk Dow and Ernest E. Dow & Co., an Accountancy Corporation
25 to pay the California Board of Accountancy the reasonable costs of the investigation and
26 enforcement of this case, pursuant to Business and Professions Code section 5107; and,

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4. Taking such other and further action as deemed necessary and proper.

DATED: September 2, 2009 Patti Bowers

PATTI BOWERS
Executive Officer
California Board of Accountancy
Department of Consumer Affairs
State of California
Complainant

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